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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,144	12/12/2003	Michael J. Shebek	APC-P0002	1570
27268	7590	02/14/2006	EXAMINER	
BAKER & DANIELS LLP 300 NORTH MERIDIAN STREET SUITE 2700 INDIANAPOLIS, IN 46204			FETSUGA, ROBERT M	
			ART UNIT	PAPER NUMBER
			3751	

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/735,144

Applicant(s)

SHEBEK, MICHAEL J.

Examiner

Robert M. Fetsuga

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 28 December 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 18 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

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1. The examiner will no longer pursue the drawing objection set forth in the previous Office action as applicant insists Fig. 6 properly illustrates rubber or plastic. The drawing does not affect the scope of any pending claim.

2. Claims 1 and 6-11 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for a track and coping assembly with a insert plate, does not reasonably provide enablement for a track and coping assembly without a insert plate. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the invention commensurate in scope with these claims.

Applicant argues at pages 2-4 of the response filed December 28, 2005 declarant Bruce Holmes opines that use of insert plate 90 is optional. However, claim 1 recites a tab 48 (ln. 5), and paragraphs 0040 and 0042 of the instant specification indicate the requirement of plate 90 to lock the track 60 in the coping 40 when the coping includes such a tab. Declarant Holmes merely states in paragraph 3 "the material thicknesses would be varied to obviate the need for an insert plate." This bald statement fails to address the recitation of the tab in claim 1. The declaration of Bruce Holmes can not be given probative value in this regard.

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3. The rejection of claim 3 for indefiniteness is hereby withdrawn in light of paragraph 4 of the declaration of Bruce Holmes.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-17 are rejected under 35 U.S.C. 102(a/e) as being anticipated by Last '990.

The Last '990 reference discloses a track and coping assembly comprising: a coping 26 including a slot having an opening 42, an inner wall 31, an opposite inner wall 33, and a tab 32; a reversible track 11 including a first channel 16 having a first opening 17, a second channel 19 having a second opening 21, and two locking ledges 13; an insert wedge 34; a pulley 23; and a pulley housing 36, as claimed. Re claims 1 and 12, the openings 17,21 in Last are "adapted to receive"

different rope/slider arrangements as discussed at column 5, lines 33-42, therein. Furthermore, these statements of intended use does not appear to impose any patentably distinguishing structure of the claimed assembly over that disclosed by Last.

Applicant argues at page 3 of the response claims 1 and 12 recite apertures not disclosed by Last. However, this argument is without merit as no apertures are recited in either of claims 1 or 12. Applicant argues at pages 3-4 of the response the invention claims a reversible track having first and second openings that receive first and second rope arrangements which are different from one another. The examiner agrees, and notes Last discloses this subject matter also as discussed supra. In this regard, Last teaches at lines 42-53 of column 12 the track and coping assembly can be used with different cover configurations. This disclosure appears to be at least equivalent to the disclosure found in paragraph 0052 of the instant specification. Applicant has not shown, nor does the examiner understand, how these two disclosures can be distinguished.

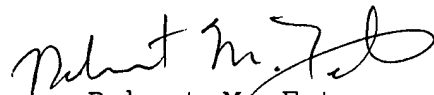
To the extent paragraph 5 of the declaration of Bruce Holmes is intended to address this ground of rejection, the following observations are made. Declarant Holmes states "the Last patent contains no teaching or suggestion that the two C

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channels of the cover track would have configurations different from each another." Initially, it is noted no obviousness rejection has been tendered which renders moot any declarations concerning a "teaching or suggestion". In any event, the claims at bar do not recite C channels having different configurations. Therefore, the declaration of Bruce Holmes can not be given probative value in this regard.

6. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

7. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

  
Robert M. Fetsuga  
Primary Examiner  
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